January 22, 2002

VIA ELECTRONIC FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Performance Measurements and Standards for Unbundled Network Elements and Interconnection ; CC Docket No. 01-318, 98-56, 98-147, 96-98, 98-141

Dear Ms. Salas:

Attached are comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceedings.

Sincerely,

/s/

Teresa K. Gaugler

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and Standards for Unbundled Network Elements and Interconnection	)	CC Docket No. 01-318
	)	
Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance	)	CC Docket No. 98-56
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket Nos. 98-147, 96-98, 98-141

COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services (ALTS) hereby files its comments in the above-referenced proceedings in response to the Commission's Notice of Proposed Rulemaking regarding the adoption of performance metrics for unbundled network elements and interconnection. The FCC has sought comment on whether it should adopt a select group of performance measurements and standards for evaluating incumbent local exchange carrier (ILEC) performance in the provisioning of unbundled network elements (UNEs). The *Notice* seeks comment on several specific measurements that the FCC believes cover the "key aspects" of pre-ordering, ordering, provisioning, and maintenance for services

that are "critically important" to ensure that competitive carriers can enter the market for local exchange services. ALTS contends that in order to establish effective safeguards against unjust and unreasonable practices in the provision of UNEs, the FCC must adopt a limited number of performance measurements and standards along with self-effectuating, graduated penalties for incumbent local exchange carrier (ILEC) noncompliance.

BACKGROUND AND SUMMARY

There can be no doubt that ILEC provisioning of UNEs is characterized by delay, poor quality, and discrimination. Adoption of measurements and standards for UNEs would undoubtedly assist the Commission in ensuring that these services are provisioned in a just and reasonable manner. Without such measures, it is simply too hard for a CLEC to prove it is receiving inadequate provisioning, too easy for an ILEC to deny that it is provisioning UNEs in an discriminatory manner, and too easy for regulators to avoid imposing penalties on an ILEC for discriminatory provisioning based on lack of sanctioned provisioning standards and an inability to obtain necessary evidence.

For years, ALTS has insisted that a set of self-executing performance metrics and standards for provisioning of both unbundled network elements and special access services will greatly improve the ability of CLECs to obtain the necessary inputs to provision competitive telecommunications services. In 1996, ALTS requested the FCC include such self-executing performance measurements and standards in the *Local Competition First Report and Order* and then immediately asked the FCC to reconsider its decision not to do so. On May 17, 2000, ALTS petitioned the Commission to take numerous steps relating to timely and nondiscriminatory provisioning of loops, and specifically requested the Commission apply its

nondiscrimination rules to ensure timely and efficient provisioning of special access circuits.[1] ALTS contended that the Commission should establish, among other things, certain and quantifiable remedies, including self-executing monetary penalties, for noncompliance with provisioning rules.[2]

The process for acquiring and utilizing any ILEC service or UNE is well understood: pre-ordering, ordering, installation, maintenance, repair and billing. With the possible exception of billing, each of these functions constitutes an opportunity for ILEC discrimination, and thus each needs specific metrics. This has been recognized by the FCC in the *Notice*, and by each of the states that have adopted metrics for ILEC services. ALTS proposes that the FCC adopt a set of performance metrics and standards that tracks the most essential and competitively significant ILEC wholesale functionalities. Several members of the competitive industry are submitting proposals in this proceeding, which are reasonable starting points and should be considered by the FCC immediately. These metrics are the result of years of experience and analysis as to the various ways in which ILECs can and have discriminated against CLECs seeking to purchase special access. These metrics and standards are designed to detect and curtail unjust, unreasonable and discriminatory ILEC provisioning practices.

ALTS believes that, rather than delaying this proceeding in an attempt to perfect the

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[1] *Petition of Association for Local Telecommunications Services for Declaratory Ruling: Broadband Loop Provisioning, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation Transferor to SBC Communications Inc., Transferee*, CC Docket No. 98-141; *Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next Generation Remote Terminals*, NSD-L-48 DA 00-891, May 17, 2000 (ALTS Petition); *Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling*: *Loop Provisioning*, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, DA 00-114, 15 FCC Rcd 18671 (2000).

measurements, standards and penalties at the outset, it is more important that the FCC quickly adopt appropriate measurements, standards and penalties and establish a process for modifying them over time to meet changing needs in the industry.

I. PERFORMANCE MEASUREMENTS AND STANDARDS ARE NECESSARY TO ENSURE NONDISCRIMINATION

ALTS believes that it is essential for the FCC to adopt performance metrics for UNEs purchased by CLECs because ILECs have an obvious anti-competitive incentive to discriminate against CLECs when providing UNEs. ILECs have incentive to raise their rivals' costs, to decrease the quality of rivals' service offerings, and to increase time to deploy competitive services. Properly constructed measurements and standards will enable regulators and industry members to detect such discrimination and, when linked to adequate self-effectuating remedies, might also effectively deter ILECs from engaging in such discrimination.

A. Performance Metrics Are Essential To Ensure Reasonable And Nondiscriminatory Provisioning of UNEs

UNEs are an essential input of production for CLECs. CLECs must be able to provide ubiquitous service offerings to customers (*e.g.,* multiple locations of a single bank, including those located in suburban areas). Although some CLECs have constructed "last mile" loop facilities in some areas, this has generally not proven to be an efficient or practical method of competitive entry. This is especially true in the case of offering competitive service to residential and small and medium business customers. Unlike large ILECs, particularly the Regional Bell Operating Companies (RBOCs), CLECs lack the captive customer base and

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[2] ALTS Petition at 31-2.

generally lack the economies of scale to make overbuilding last mile loops an economically viable option. Moreover, CLECs often cannot obtain access to buildings that are connected to the ILEC networks and new construction may take too long for a customer that needs service connected immediately.

Because of the lack of specific, enforceable rules requiring ILECs to provision functioning loops to requesting carriers in a timely and reliable manner, incumbents have been given a five-year free pass to deny, delay, and degrade the loops they provide to CLECs. A loop provisioned a month late is no better than a loop never provisioned at all. Few customers will await service for so long, especially when another option – retail broadband service from the very same ILEC that denied a timely wholesale loop – is usually available in a matter of days. Moreover, the demise of competitive data providers is evidence that the ILECs have successfully out-waited the capitalization of these competitors through a variety of tactics including egregious provisioning delays.

When the Commission first adopted its loop unbundling rules in 1996, it did not adopt specific provisioning intervals, but rather noted "it is vital that we reexamine our rules over time in order to reflect developments in the dynamic telecommunications industry."[3] One of most pervasive ILEC maneuvers around the current federal rules is the poor timeliness of loop provisioning.[4] Competitive carriers need concrete, specific UNE provisioning rules with

[3] *Local Competition First Report and Order* at para. 58.

[4] The clearest evidence of the dysfunction in the Commission's loop enforcement process is that incumbent LECs support it. For example, in comments filed in opposition to the ALTS loop petition last year, GTE argued that allegations of anticompetitive loop provisioning practices "are best dealt with through the complaint process." GTE Comments at 3. SBC stated in its comments that "the proper remedy is a complaint with the state commission or the FCC". SBC Comments at 24. Why are the BOCs unanimous in their preference for existing (continued….)

associated remedies and financial incentives in order to be able to compete with the incumbent monopoly carriers and reliably serve customers.

In the absence of performance measurements and standards, no one – not CLECs, regulators or arbitrators, or even well-intentioned ILEC provisioning agents – knows what is just and reasonable provisioning in order to detect and deter ILEC unreasonable discrimination. Performance metrics and remedies will deliver very substantial long-term benefits through increased competition, lower prices, and innovation. These benefits far outweigh any costs of implementing such metrics.

Furthermore, adoption of performance metrics will not impose significant new burdens either on regulators or the industry. In fact, adoption of performance metrics can reduce discrimination merely because a measurement process is in place. Performance measurements create a public record of obligations and oversight and increase the likelihood of detection, which deters bad behavior. Finally, regulatory oversight will be further streamlined through adoption of self-effectuating remedies.

B. ILEC Reporting Obligations Are Vital to Monitoring Performance

The FCC should require that the performance plan include review and monitoring mechanisms that assure the data will be reported in a consistent and reliable manner. Competitors should not bear responsibility for collecting data; however, when competitors do collect and submit data, it should be considered in evaluating an ILEC's performance.

ILECs should be required to provide monthly reports disaggregated by state. Requiring state-by-state reporting should assist in benchmarking an ILEC's performance in one area

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rules and procedures? Because those procedures virtually guarantee, based on a five year, zero-enforcement (continued….)

versus another area. For those measurements for which the standard is parity, ILECs should be required to report separately on performance provided to (1) their end user customers, (2) their affiliates, (3) unaffiliated carrier customers as a whole, and (4) each separate competitive carrier (with appropriate confidential treatment for individual carrier reports). Finally, the Commission must ensure that the underlying performance data is available to the FCC, independent auditors, and aggrieved carriers, which will help protect against inaccurate performance reporting.

C. Self-Executing Remedies And Penalties Will Reduce Discrimination and The Need for Regulatory Oversight

The FCC should establish self-executing remedies and penalties for failure to meet the established performance standards. At a minimum, the FCC should adopt base forfeiture amounts up to the maximum amount permitted under the statute for failure to meet the standards. These penalties should be designed to ensure that an economically rational incumbent monopolist would rather avoid the penalty than enjoy the benefit to be gained by handicapping its competitors. The goal is to establish penalty or remedy levels that will cause an end to any statistical disparity between CLEC purchases of UNEs and the purchase (or self-provisioning) of ILEC UNEs by anyone else. As a policy matter, it makes much more sense for the FCC to risk erring on the side of undue penalties and remedies, and then reducing them over time, than to approach its task from the other direction.

Currently, ILECs can degrade the quality of their competitors' UNEs without suffering any negative consequences in terms of lost market share. In fact, the ILECs have incentive to

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record of the FCC, that the BOCs will never face any penalty for their discriminatory loop practices.

reduce profits from their wholesale business because that typically means they have increased profits and market share for their retail business. In a competitive market, this would not be the case. In that context, if an ILEC provided poor service quality, it would lose market share and therefore experience lower profits, which would give the ILEC the incentive to improve its service quality. The Commission should attempt to replicate this dynamic by imposing automatic, self-enforcing financial penalties on ILECs for failure to provide nondiscriminatory access to UNEs to their competitors.

The task of quantifying such remedies is not unprecedented and is common in various commercial settings. For example, most construction contracts include provisioning intervals and provisions for liquidated damages for a party's failure to meet delivery deadlines. Similarly, ILECs should be subject to penalties for failure to comply with UNE provisioning and reporting obligations. The triggers for those penalties and the amount of penalties could readily be modeled after a solid state Performance Assurance Plan (PAP) design such as the one adopted in New York.

Carriers should also be eligible for full refunds on service charges associated with failure to meet specified performance standards. These remedies should come in the form of monthly aggregate payments to the aggrieved CLEC rather than in the form of bill credits. Remedies should apply to all carriers' bills where the ILEC fails to meet the relevant standard for carriers as a whole. Where service is particularly poor for a specific carrier customer, the remedy should be higher for that carrier than for other carriers. Moreover, in the case of both the all-carrier remedies and the carrier-specific remedies, repeated failures to meet performance standards should result in higher amounts of remedies.

Such financial penalties should increase the cost of discrimination, but they may not be sufficient by themselves to deter ILEC anti-competitive behavior completely. The Commission must therefore establish a presumption that, if an ILEC fails to meet a performance standard either three months in a row or in four out of six months, the Commission will issue a notice of apparent liability and seek to impose forfeitures pursuant to Section 503 of the Act. The Commission should issue such a notice unless the ILEC has missed the relevant performance standard in these cases by only a statistically insignificant amount. The level of the forfeiture should be calibrated to correspond with the degree to which the ILEC has missed the relevant standard and the degree to which the ILEC has a missed performance standards in the past.

Special rules should also be established to address ILEC failures to comply with the reporting requirements. No obligation imposed under this regime should be viewed as more critical than reporting. If an ILEC fails to report the proper data or fails to report it accurately, the entire performance regime will be undermined. The Commission should therefore require that ILECs undergo an annual audit of their UNE performance reports. The audit should include a comprehensive review of the ILEC's procedures for complying with the business reporting guidelines, such as business rules and exclusions. In addition, the auditors should review the data reported for accuracy. This can be done by reviewing the data reported during a representative time period (three consecutive months, for example) in a single state chosen at random for each of the measurements. Furthermore, a CLEC should be allowed to petition the Commission to require a special audit of data where the CLEC can make a *prima facie* case that the data for a particular measurement in a particular state is unreliable. In any case where an ILEC is found to have failed to comply with the measurement rules (*e.g.,* failed to properly

apply business rules, exclusion rules, etc. set forth in a particular measurement requirement) or failed to report accurate data, the Commission should aggressively seek forfeiture penalties.

None of these remedies should preclude an aggrieved carrier from bringing separate legal action either before the FCC or in federal court to recover compensatory and punitive damages. Carrier should continue to be able to bring a separate 208 complaint for poor UNE service quality or bring a tort, contract or antitrust claim to a court of competent jurisdiction. Even when all of the mechanisms described herein are applied, it is still unlikely that the ILECs' incentives for discrimination will completely disappear. It is also unlikely that any automatic financial penalties imposed on ILECs will fully compensate the carrier customers, especially where the service failure is severe. Thus, aggrieved carriers must have alternate means of addressing their claims.

D. The Commission Has Authority and Precedent To Adopt UNE Performance Metrics and Self-Executing Remedies

The Commission has jurisdiction to adopt performance metrics, standards and penalties, and such adoption will further the Commission's commitment to facilities-based competition. Section 251(c)(3) of the Act requires incumbent LECs to provide access to unbundled network elements, such as UNEs, pursuant to "rates, terms and conditions" that are "just, reasonable and nondiscriminatory." Incumbent LECs generally focus on the "nondiscriminatory" language of section 251(c)(3) and argue that no regulator can impose any obligation that requires UNE performance any *better* than the ILECs provide their own retail customers. The plain language of section 251(c)(3) clearly provides otherwise. The "just and reasonable" language of section 251(c)(3) is not mere surplussage – it imposes a separate and distinct legal obligation on the ILECs. Indeed, were that additional obligation not there, incumbent LECs that did not offer a

particular service would claim no obligation to provide UNEs in a timely manner. For example, incumbent LECs do not offer xDSL services over standalone loops, but rather provide such retail services solely via linesharing. As a result, the "nondiscrimination" language of section 251(c)(3) is insufficient, by itself, to ensure provisioning of standalone loops to competitive carriers. Fortunately, Congress ensured that ILEC wholesale services would be subject to an independent legal requirement, tied to an objective standard to be interpreted by the FCC. The "just and reasonable" requirement of section 251(c)(3) empowers the Commission to exercise its authority as the expert agency to promulgate concrete UNE intervals and penalties to further the requirements of, and ensure compliance with, the statute.[5]

For facilities-based carriers, timely and reliable access to loops is a critical element of service provisioning. Competitive carriers cannot promise customers that service will be delivered in a uniform, timely manner, because of the inconsistent loop provisioning practices of the incumbent LECs. A number of states have adopted, or are in the process of considering, very pro-competitive performance standards and remedy plans. Unfortunately, not all states have acted on this important matter. By adopting minimum federal standards, the FCC would provide some level of certainty to competitive carriers.

With regard to xDSL-capable loops in particular, it is indeed entirely within the Commission's authority and responsibilities to ensure that purchasers of interstate telecommunications services and elements receive a certain minimum level of service quality from the incumbent LEC -- because the incumbent LEC clearly has market power and

[5] The Commission also has ample common carrier jurisdiction, pursuant to sections 201 and 202 of the Act, to promulgate rules that ensure that all "practices" of the incumbent LECs are "just and reasonable." 47 U.S.C. sec. 201.

degradation of service quality is a primary method by which a firm with market power may seek to exercise that power.

Adoption of performance metrics and self-enforcing penalties is within the FCC's authority, pursuant to Section 201(b) and 202(a) and consistent with FCC precedent. The FCC has clear authority pursuant to Sections 201(b) and 202(a) to establish regulations designed to prevent unjust and unreasonable charges and practices and to prevent unjust and unreasonable discrimination. The FCC has imposed analogous requirements in the UNE/collocation context based on unjust and unreasonable language that is exactly the same as the language in 201(b). The FCC has authority under Title V to order forfeitures and compensation to other carriers and under Section 205 to order refunds.

II. ADOPTED MEASUREMENTS, STANDARDS, AND PENALTIES MUST BE FLEXIBLE AND MUTABLE

ALTS believes any measurements and standards adopted by the Commission should be open to modification over time to the extent changes in products or circumstances might warrant modification. No single list of measurements and standards will be perfect for all time. Thus, we believe it is more important for the FCC to adopt a limited set of measures immediately and to establish a process by which these measures and standards may be routinely modified as circumstances dictate.

The usefulness of a specific metric can change quickly. For example, changes in the software systems used by ILECs to provide special access can easily require changes in metrics related to that software's functions. Even if the FCC, with the help of the states, were to adopt metrics that were ideal on their date of adoption, on-going changes in the ILECs' underlying provisioning systems will require tweaks, changes, and sometimes wholesale revisions.

The proper solution to this variability is not to pretend that it does not exist, nor to abandon the entire undertaking, but rather to create a simple process for making modifications to metrics as needed, with minimal regulatory involvement. Congress has already provided such a model via the current section 252 interconnection/arbitration process. Because the section 252 process expressly includes provisions that fall outside section 251 (*see* section 252(a)), the Commission can direct that any party seeking changes to established metrics – perhaps to retire them because they are no longer needed, or perhaps to modify them to capture changes in work flows – is authorized to invoke the provisions of section 252. The likelihood that state metrics will be incorporated with Federal metrics also makes the section 251 process desirable.

Many ALTS members support the model metrics being submitted by WorldCom in this proceeding and have participated in collaborations with WorldCom to develop those performance measurements and standards. Other ALTS members, such as Covad and Allegiance, are separately submitting proposals that address their individual business needs pursuant to the services they offer. Each of these proposals provides a reasonable starting point for the Commission and should be strongly considered.

At a minimum, the FCC must adopt self-executing intervals, and associated penalties, for standalone UNE loops, linesharing UNEs, and interoffice transport – the core of the ILEC monopoly network, and the crucial inputs for any facilities-based CLEC.

Stand-alone loops

In the Line Sharing Order, the Commission cited with approval the provisioning interval adopted by the Texas PUC of 3 business days for standalone loops.[6] This interval is more than sufficient time for incumbent LECs to provision a loop, especially if the incumbents cease delaying the implementation of electronic pre-order and order capabilities. When the loop requires conditioning, and the competitive LEC requests such conditioning, the loop interval could be a bit longer so as to permit the incumbent to complete such conditioning activities as are necessary.

Linesharing

The Illinois Commerce Commission recently adopted a linesharing UNE provisioning interval of one business day.[7] That interval recognizes the very minimal amount of provisioning work that an ILEC must perform to provision a linesharing UNE. Because the loop over which the DSL lineshared service will be provided is already in service and working, the ILEC need only complete simple cross-connect work in the central office to provision the UNE. One business day is more than sufficient for the ILEC to complete the (literally) few minutes of work required to provision linesharing.

[6] We note that the Texas Commission requires that the incumbent LEC provision 95 percent of xDSL orders within 3 business days (for 1-10 loops), 7 business days (11-20 loops) and 10 business days (20+ loops). In Texas, this provisioning interval runs from the application date to completion date for new, terminating, and change orders. The application date is the day that the requesting carrier authorizes the incumbent to provision the xDSL capable loop based on the loop qualification. The completion date is the day that the incumbent completes the service order activity. *See* Linesharing Order, FCC 99-355, at para. 174.

[7] Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois and for an Expedited Arbitration Award on Certain Core Issues, Docket No. 00-312, 00-0313 (Consol.), August 17, 2000 Arbitration Decision at 25-27; Illinois Bell Telephone Company Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service, Docket No. 00-0393, March 14, 2001 Order at 73 (requiring Ameritech Illinois to tariff in Illinois 24 hour interval for line sharing loops not requiring conditioning, and 3 days for loops requiring conditioning established in Covad/Rhythms line sharing arbitration).

DS-1 UNE Loops

ALTS also requests that the Commission take steps in this proceeding to require changes in ILEC practices of declining to provide DS1 UNEs based on "no facilities" available. These emerging refusals to provision UNEs based on the "no facilities" response appears to reflect a growing trend among ILECs to escape or unreasonably limit their obligation to modify existing loops as part of their provision of unbundled access to loops even when they perform the same modifications for their own retail customers.[8] CLECs are very concerned that ILECs will attempt to use "no facilities" as a wide-ranging new tool to limit their obligations to provide UNEs and compel CLECs to purchase more expensive, less versatile special access services, which are not even subject to state oversight. ILECs increasingly appear to view the "no facilities" theory as an opportunity to thwart CLECs' ability to provide a range of very competitive voice and data services using DS1 loops made possible by next generation technologies. ILEC policies of refusing to provide UNEs and requiring CLECs to purchase special access service appears to be a manifestation of a larger policy to shift facilities and services provided to CLECs to separate and inferior networks. ALTS urges the Commission to promptly stop ILECs from unreasonably limiting their obligations to provide DS1 UNE loops, as well as other UNEs, and assure that ILECs offer UNEs on reasonable and nondiscriminatory terms and conditions as required by Section 251(c)(3) of the Act.

ALTS requests that the Commission establish requirements governing when ILECs may, if ever, decline to provide loops on the grounds that no facilities are available. CLECs

[8] A number of ILECs apparently have comparable or worse "no facilities" policies. See Letter from XO Communications, Inc. to Magalie Roman Salas, CC Docket No. 96-98, filed August 24, 2001, p. 7, concerning Qwest and Verizon "no facilities" policies.

request that the Commission determine that ILECs must take the same affirmative steps to provide DS1 and DS3 UNEs to CLECs that the ILEC takes to provide retail service to its own customers. The Commission should reject the limitations that ILECs seek to impose under such "no facilities" policies as unreasonable, discriminatory, and unlawful under Section 251(c)(3). The Commission should establish rules requiring this result in this proceeding.

III. FEDERAL MEASURES AND STANDARDS MUST SERVE AS A FLOOR AND NOT SUPERCEDE STATE OVERSIGHT

Finally, ALTS cannot overemphasize that whatever action the FCC takes in this proceeding, it must not rollback any of the pro-competitive work already undertaken or to be undertaken at the state level. While the FCC stayed on the sideline in this area since adoption of the 1996 Act, several states have moved forward with adopting comprehensive performance measurements, benchmarks and remedy plans in their effort to foster local competition. CLECs have actively sought out those states that have established pro-competitive policies, such as adoption of performance measures and standards. These states have given competition a chance to develop. Outside these states, however, competition continues to be stymied. We have seen emerge a new "digital divide" between those states that have proactively fostered competition and those that have declined to allow competition within their borders. The FCC must do what is necessary to establish a baseline for competition, to ensure that the residents of those states that have not yet embraced pro-competitive policies can obtain some of the fruits of competition.

The states have clear authority to promote competitive policies pursuant to section 251 and 252 of the Act, and anything the FCC does in this proceeding must not interfere with state

activity designed to promote competition. Just as the US Constitution creates a floor of rights below which states may not tread but above which the states are free to promote greater liberty, so to must the FCC establish a floor below which no state may interfere but above which any state may do more to further promote competition for its residents within its borders.

CONCLUSION

The Commission has ample authority to require incumbent LECs to provide UNEs in a concrete and specific time frame, and indeed the Commission's failure to ensure timely delivery of UNEs makes unbundling rules virtually meaningless. The Commission's dedication to ensuring that facilities-based competitors are able to compete effectively against their incumbent LEC competitors must take account of the fact that those competitors are also wholesale suppliers that have the powerful incentive and ability to delay competitor access to UNEs. The Commission must adopt, as soon as possible, a set of federal UNE performance measures and standards and associated penalties.

Respectfully Submitted,

Association for Local Telecommunications Services

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